

Introduced by Senator Leno

February 21, 2014

An act to amend Sections 300, 301, 302, 420, 500, 720, 721, 750, 751, 752, 754, 761, 1102, 1500, 1620, 1839, 2200, 2201, 2210, 2211, 2322, 2400, 2401, 3120, 3450, 3551, 3580, 3585, 3600, 4323, and 4930 of, to amend the heading of Chapter 2 (commencing with Section 720) of Part 1 of Division 4 of, to amend the heading of Chapter 3 (commencing with Section 1620) of Part 5 of Division 4 of, to repeal Section 308.5 of, and to repeal and add Section 308 of, the Family Code, relating to marriage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1306, as introduced, Leno. Marriage.

An existing provision of the California Constitution, which has been held unenforceable, states that only marriage between a man and a woman is valid or recognized in this state. An existing statutory provision likewise provides that only marriage between a man and a woman is valid or recognized in this state.

This bill would repeal that statutory provision.

Existing statutory law provides that marriage is a personal relationship arising out of a civil contract between a man and a woman. Under existing law, a marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state, except that a marriage between 2 persons of the same sex contracted outside this state is valid in this state only if the marriage was contracted prior to November 5, 2008.

This bill would instead provide that marriage is a personal relation arising out of a civil contract between 2 persons, and would make conforming changes with regard to the consent to, and solemnization

of, marriage. The bill would also delete the limitation on the validity of marriages contracted outside this state between 2 persons of the same sex.

Under existing law, a reference to “husband” and “wife,” “spouses,” or “married persons,” or a comparable term, includes persons who are lawfully married to each other and persons who were previously lawfully married to each other, as is appropriate under the circumstances of the particular case.

The bill would delete references to “husband” or “wife” in the Family Code and would instead refer to a “spouse,” and would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 300 of the Family Code is amended to
2 read:

3 300. (a) Marriage is a personal relation arising out of a civil
4 contract between ~~a man and a woman~~ *two persons*, to which the
5 consent of the parties capable of making that contract is necessary.
6 Consent alone does not constitute marriage. Consent must be
7 followed by the issuance of a license and solemnization as
8 authorized by this division, except as provided by Section 425 and
9 Part 4 (commencing with Section 500).

10 (b) For purposes of this part, the document issued by the county
11 clerk is a marriage license until it is registered with the county
12 recorder, at which time the license becomes a marriage certificate.

13 SEC. 2. Section 301 of the Family Code is amended to read:

14 301. ~~An~~ *Two* unmarried ~~male of the age of~~ *persons* 18 years
15 *of age* or older, ~~and an unmarried female of the age of 18 years or~~
16 ~~older, and~~ *who are* not otherwise disqualified, are capable of
17 consenting to and consummating marriage.

18 SEC. 3. Section 302 of the Family Code is amended to read:

19 302. (a) An unmarried ~~male or female person under the age~~
20 ~~of 18 years~~ *18 years of age* is capable of consenting to and
21 consummating marriage upon obtaining a court order granting
22 permission to the underage person or persons to marry.

23 (b) The court order and written consent of the parents of each
24 underage person, or of one of the parents or the guardian of each

1 underage person shall be filed with the clerk of the court, and a
2 certified copy of the order shall be presented to the county clerk
3 at the time the marriage license is issued.

4 SEC. 4. Section 308 of the Family Code is repealed.

5 ~~308. (a) A marriage contracted outside this state that would~~
6 ~~be valid by the laws of the jurisdiction in which the marriage was~~
7 ~~contracted is valid in this state.~~

8 ~~(b) Notwithstanding any other provision of law, a marriage~~
9 ~~between two persons of the same sex contracted outside this state~~
10 ~~that would be valid by the laws of the jurisdiction in which the~~
11 ~~marriage was contracted is valid in this state if the marriage was~~
12 ~~contracted prior to November 5, 2008.~~

13 ~~(c) Notwithstanding any other provision of law, two persons of~~
14 ~~the same sex who contracted a marriage on or after November 5,~~
15 ~~2008, that would be valid by the laws of the jurisdiction in which~~
16 ~~the marriage was contracted shall have the same rights, protections,~~
17 ~~and benefits, and shall be subject to the same responsibilities,~~
18 ~~obligations, and duties under law, whether they derive from the~~
19 ~~California Constitution, the United States Constitution, statutes,~~
20 ~~administrative regulations, court rules, government policies,~~
21 ~~common law, or any other provisions or sources of law, as are~~
22 ~~granted to and imposed upon spouses with the sole exception of~~
23 ~~the designation of “marriage.”~~

24 SEC. 5. Section 308 is added to the Family Code, to read:

25 308. A marriage contracted outside this state that would be
26 valid by laws of the jurisdiction in which the marriage was
27 contracted is valid in this state.

28 SEC. 6. Section 308.5 of the Family Code is repealed.

29 ~~308.5. Only marriage between a man and a woman is valid or~~
30 ~~recognized in California.~~

31 SEC. 7. Section 420 of the Family Code is amended to read:

32 420. (a) No particular form for the ceremony of marriage is
33 required for solemnization of the marriage, but the parties shall
34 declare, in the physical presence of the person solemnizing the
35 marriage and necessary witnesses, that they take each other as
36 ~~husband and wife~~ *spouses*.

37 (b) Notwithstanding subdivision (a), a member of the Armed
38 Forces of the United States who is stationed overseas and serving
39 in a conflict or a war and is unable to appear for the licensure and
40 solemnization of the marriage may enter into that marriage by the

1 appearance of an attorney in fact, commissioned and empowered
2 in writing for that purpose through a power of attorney. The
3 attorney in fact must personally appear at the county clerk's office
4 with the party who is not stationed overseas, and present the
5 original power of attorney duly signed by the party stationed
6 overseas and acknowledged by a notary or witnessed by two
7 officers of the United States Armed Forces. Copies in any form,
8 including by facsimile, are not acceptable. The power of attorney
9 shall state the full given names at birth, or by court order, of the
10 parties to be married, and that the power of attorney is solely for
11 the purpose of authorizing the attorney in fact to obtain a marriage
12 license on the person's behalf and participate in the solemnization
13 of the marriage. The original power of attorney shall be a part of
14 the marriage certificate upon registration.

15 (c) No contract of marriage, if otherwise duly made, shall be
16 invalidated for want of conformity to the requirements of any
17 religious sect.

18 SEC. 8. Section 500 of the Family Code is amended to read:

19 500. When ~~an unmarried man and an unmarried woman~~ *two*
20 *unmarried people*, not minors, have been living together as ~~husband~~
21 ~~and wife~~, *spouses*, they may be married pursuant to this chapter
22 by a person authorized to solemnize a marriage under Chapter 1
23 (commencing with Section 400) of Part 3, without the necessity
24 of first obtaining health certificates.

25 SEC. 9. The heading of Chapter 2 (commencing with Section
26 720) of Part 1 of Division 4 of the Family Code is amended to
27 read:

28
29 CHAPTER 2. RELATION OF ~~HUSBAND AND WIFE~~ *SPOUSES*
30

31 SEC. 10. Section 720 of the Family Code is amended to read:

32 720. ~~Husband and wife~~ *Spouses* contract toward each other
33 obligations of mutual respect, fidelity, and support.

34 SEC. 11. Section 721 of the Family Code is amended to read:

35 721. (a) Subject to subdivision (b), either ~~husband or wife~~
36 *spouse* may enter into any transaction with the other, or with any
37 other person, respecting property, which either might if unmarried.

38 (b) Except as provided in Sections 143, 144, 146, 16040, and
39 16047 of the Probate Code, in transactions between themselves,
40 ~~a husband and wife~~ *spouses* are subject to the general rules

governing fiduciary relationships ~~which~~ *that* control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code, including, but not limited to, the following:

(1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.

(2) Rendering upon request, true and full information of all things affecting any transaction ~~which~~ *that* concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.

(3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse ~~which~~ *that* concerns the community property.

SEC. 12. Section 750 of the Family Code is amended to read:

750. ~~A husband and wife~~ *Spouses* may hold property as joint tenants or tenants in common, or as community property, or as community property with a right of survivorship.

SEC. 13. Section 751 of the Family Code is amended to read:

751. The respective interests of ~~the husband and wife~~ *each spouse* in community property during continuance of the marriage relation are present, existing, and equal interests.

SEC. 14. Section 752 of the Family Code is amended to read:

752. Except as otherwise provided by statute, neither ~~husband nor wife~~ *spouse* has any interest in the separate property of the other.

SEC. 15. Section 754 of the Family Code is amended to read:

754. If notice of the pendency of a proceeding for dissolution of the marriage, for nullity of the marriage, or for legal separation of the parties is recorded in any county in which ~~the husband or wife~~ *either spouse* resides on real property that is the separate property of the other, the real property shall not for a period of three months thereafter be transferred, encumbered, or otherwise

1 disposed of voluntarily or involuntarily without the joinder of both
2 spouses, unless the court otherwise orders.

3 SEC. 16. Section 761 of the Family Code is amended to read:

4 761. (a) Unless the trust instrument or the instrument of
5 transfer expressly provides otherwise, community property that is
6 transferred in trust remains community property during the
7 marriage, regardless of the identity of the trustee, if the trust,
8 originally or as amended before or after the transfer, provides that
9 the trust is revocable as to that property during the marriage and
10 the power, if any, to modify the trust as to the rights and interests
11 in that property during the marriage may be exercised only with
12 the joinder or consent of both spouses.

13 (b) Unless the trust instrument expressly provides otherwise, a
14 power to revoke as to community property may be exercised by
15 either spouse acting alone. Community property, including any
16 income or appreciation, that is distributed or withdrawn from a
17 trust by revocation, power of withdrawal, or otherwise, remains
18 community property unless there is a valid transmutation of the
19 property at the time of distribution or withdrawal.

20 (c) The trustee may convey and otherwise manage and control
21 the trust property in accordance with the provisions of the trust
22 without the joinder or consent of ~~the husband or wife~~ *either spouse*
23 unless the trust expressly requires the joinder or consent of one or
24 both spouses.

25 (d) This section applies to a transfer made before, on, or after
26 July 1, 1987.

27 (e) Nothing in this section affects the community character of
28 property that is transferred before, on, or after July 1, 1987, in any
29 manner or to a trust other than described in this section.

30 SEC. 17. Section 1102 of the Family Code is amended to read:

31 1102. (a) Except as provided in Sections 761 and 1103, either
32 spouse has the management and control of the community real
33 property, whether acquired prior to or on or after January 1, 1975,
34 but both spouses, either personally or by a duly authorized agent,
35 must join in executing any instrument by which that community
36 real property or any interest therein is leased for a longer period
37 than one year, or is sold, conveyed, or encumbered.

38 (b) Nothing in this section shall be construed to apply to a lease,
39 mortgage, conveyance, or transfer of real property or of any interest
40 in real property between ~~husband and wife~~ *spouses*.

(c) Notwithstanding subdivision (b):

(1) The sole lease, contract, mortgage, or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed prior to January 1, 1975.

(2) The sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed on or after January 1, 1975.

(d) No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of either spouse alone, executed by the spouse alone, shall be commenced after the expiration of one year from the filing for record of that instrument in the recorder's office in the county in which the land is situated.

(e) Nothing in this section precludes either spouse from encumbering his or her interest in community real property, as provided in Section 2033, to pay reasonable attorney's fees in order to retain or maintain legal counsel in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

SEC. 18. Section 1500 of the Family Code is amended to read:

1500. The property rights of ~~husband and wife~~ *spouses* prescribed by statute may be altered by a premarital agreement or other marital property agreement.

SEC. 19. The heading of Chapter 3 (commencing with Section 1620) of Part 5 of Division 4 of the Family Code is amended to read:

CHAPTER 3. AGREEMENTS BETWEEN ~~HUSBAND AND WIFE~~
SPOUSES

SEC. 20. Section 1620 of the Family Code is amended to read:

1620. Except as otherwise provided by law, ~~a husband and wife~~ *spouses* cannot, by a contract with each other, alter their legal relations, except as to property.

SEC. 21. Section 1839 of the Family Code is amended to read:

1 1839. (a) At or after the hearing, the court may make orders
2 in respect to the conduct of the spouses or parents and the subject
3 matter of the controversy that the court deems necessary to preserve
4 the marriage or to implement the reconciliation of the spouses. No
5 such order shall be effective for more than 30 days from the hearing
6 of the petition unless the parties mutually consent to a continuation
7 of the time the order remains effective.

8 (b) A reconciliation agreement between the parties may be
9 reduced to writing and, with the consent of the parties, a court
10 order may be made requiring the parties to comply fully with the
11 agreement.

12 (c) During the pendency of a proceeding under this part, the
13 superior court may order ~~the husband or wife, or father or mother,~~
14 *a spouse or parent*, as the case may be, to pay an amount necessary
15 for the support and maintenance of ~~the wife or husband~~ *the other*
16 *spouse* and for the support, maintenance, and education of the
17 minor children, as the case may be. In determining the amount,
18 the superior court may take into consideration the recommendations
19 of a financial referee if one is available to the court. An order made
20 pursuant to this subdivision shall not prejudice the rights of the
21 parties or children with respect to any subsequent order ~~which~~ *that*
22 may be made. An order made pursuant to this subdivision may be
23 modified or terminated at any time except as to an amount that
24 accrued before the date of filing of the notice of motion or order
25 to show cause to modify or terminate.

26 SEC. 22. Section 2200 of the Family Code is amended to read:

27 2200. Marriages between parents and children, ancestors and
28 descendants of every degree, and between ~~brothers and sisters~~
29 *siblings* of the half as well as the whole blood, and between uncles
30 *or aunts* and nieces or ~~aunts and~~ nephews, are incestuous, and void
31 from the beginning, whether the relationship is legitimate or
32 illegitimate.

33 SEC. 23. Section 2201 of the Family Code is amended to read:

34 2201. (a) A subsequent marriage contracted by a person during
35 the life of ~~a his or her former husband or wife of the person,~~
36 *spouse*, with a person other than the former ~~husband or wife,~~
37 *spouse*, is illegal and void ~~from the beginning~~, unless:

38 (1) The former marriage has been dissolved or adjudged a nullity
39 before the date of the subsequent marriage.

1 (2) The former ~~husband or wife~~ *(i) spouse (A)* is absent, and not
2 known to the person to be living for the period of five successive
3 years immediately preceding the subsequent marriage, or ~~(ii) (B)~~
4 is generally reputed or believed by the person to be dead at the
5 time the subsequent marriage was contracted.

6 (b) In either of the cases described in paragraph (2) of
7 subdivision (a), the subsequent marriage is valid until its nullity
8 is adjudged pursuant to subdivision (b) of Section 2210.

9 SEC. 24. Section 2210 of the Family Code is amended to read:

10 2210. A marriage is voidable and may be adjudged a nullity if
11 any of the following conditions existed at the time of the marriage:

12 (a) The party who commences the proceeding or on whose
13 behalf the proceeding is commenced was without the capability
14 of consenting to the marriage as provided in Section 301 or 302,
15 unless, after attaining the age of consent, the party for any time
16 freely cohabited with the other as ~~husband and wife~~ *his or her*
17 *spouse*.

18 (b) The ~~husband or wife~~ *spouse* of either party was living and
19 the marriage with that ~~husband or wife~~ *spouse* was then in force
20 and that ~~husband or wife~~ *spouse* (1) was absent and not known to
21 the party commencing the proceeding to be living for a period of
22 five successive years immediately preceding the subsequent
23 marriage for which the judgment of nullity is sought or (2) was
24 generally reputed or believed by the party commencing the
25 proceeding to be dead at the time the subsequent marriage was
26 contracted.

27 (c) Either party was of unsound mind, unless the party of
28 unsound mind, after coming to reason, freely cohabited with the
29 other as ~~husband and wife~~ *his or her spouse*.

30 (d) The consent of either party was obtained by fraud, unless
31 the party whose consent was obtained by fraud afterwards, with
32 full knowledge of the facts constituting the fraud, freely cohabited
33 with the other as ~~husband or wife~~ *his or her spouse*.

34 (e) The consent of either party was obtained by force, unless
35 the party whose consent was obtained by force afterwards freely
36 cohabited with the other as ~~husband or wife~~ *his or her spouse*.

37 (f) Either party was, at the time of marriage, physically incapable
38 of entering into the marriage state, and that incapacity continues,
39 and appears to be incurable.

40 SEC. 25. Section 2211 of the Family Code is amended to read:

2211. A proceeding to obtain a judgment of nullity of marriage, for causes set forth in Section 2210, must be commenced within the periods and by the parties, as follows:

(a) For causes mentioned in subdivision (a) of Section 2210, by any of the following:

(1) The party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent.

(2) A parent, guardian, conservator, or other person having charge of the ~~underaged male or female~~ *minor*, at any time before the married minor has arrived at the age of legal consent.

(b) For causes mentioned in subdivision (b) of Section 2210, by either of the following:

(1) Either party during the life of the other.

(2) The former ~~husband or wife~~ *spouse*.

(c) For causes mentioned in subdivision (c) of Section 2210, by the party injured, or by a relative or conservator of the party of unsound mind, at any time before the death of either party.

(d) For causes mentioned in subdivision (d) of Section 2210, by the party whose consent was obtained by fraud, within four years after the discovery of the facts constituting the fraud.

(e) For causes mentioned in subdivision (e) of Section 2210, by the party whose consent was obtained by force, within four years after the marriage.

(f) For causes mentioned in subdivision (f) of Section 2210, by the injured party, within four years after the marriage.

SEC. 26. Section 2322 of the Family Code is amended to read:

2322. For the purpose of a proceeding for dissolution of marriage, ~~the husband and wife~~ each *spouse* may have a separate domicile or residence depending upon proof of the fact and not upon legal presumptions.

SEC. 27. Section 2400 of the Family Code is amended to read:

2400. (a) A marriage may be dissolved by the summary dissolution procedure provided in this chapter if all of the following conditions exist at the time the proceeding is commenced:

(1) Either party has met the jurisdictional requirements of Chapter 3 (commencing with Section 2320) with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irremediable breakdown of the marriage and the marriage should be dissolved.

1 (3) There are no children of the relationship of the parties born
2 before or during the marriage or adopted by the parties during the
3 marriage, and ~~the wife, neither party, to her~~ *that party's* knowledge,
4 is ~~not~~ pregnant.

5 (4) The marriage is not more than five years in duration as of
6 the date of separation of the parties.

7 (5) Neither party has any interest in real property wherever
8 situated, with the exception of the lease of a residence occupied
9 by either party which satisfies the following requirements:

10 (A) The lease does not include an option to purchase.

11 (B) The lease terminates within one year from the date of the
12 filing of the petition.

13 (6) There are no unpaid obligations in excess of four thousand
14 dollars (\$4,000) incurred by either or both of the parties after the
15 date of their marriage, excluding the amount of any unpaid
16 obligation with respect to an automobile.

17 (7) The total fair market value of community property assets,
18 excluding all encumbrances and automobiles, including any
19 deferred compensation or retirement plan, is less than twenty-five
20 thousand dollars (\$25,000), and neither party has separate property
21 assets, excluding all encumbrances and automobiles, in excess of
22 twenty-five thousand dollars (\$25,000).

23 (8) The parties have executed an agreement setting forth the
24 division of assets and the assumption of liabilities of the
25 community, and have executed any documents, title certificates,
26 bills of sale, or other evidence of transfer necessary to effectuate
27 the agreement.

28 (9) The parties waive any rights to spousal support.

29 (10) The parties, upon entry of the judgment of dissolution of
30 marriage pursuant to Section 2403, irrevocably waive their
31 respective rights to appeal and their rights to move for a new trial.

32 (11) The parties have read and understand the summary
33 dissolution brochure provided for in Section 2406.

34 (12) The parties desire that the court dissolve the marriage.

35 (b) On January 1, 1985, and on January 1 of each odd-numbered
36 year thereafter, the amounts in paragraph (6) of subdivision (a)
37 shall be adjusted to reflect any change in the value of the dollar.
38 On January 1, 1993, and on January 1 of each odd-numbered year
39 thereafter, the amounts in paragraph (7) of subdivision (a) shall
40 be adjusted to reflect any change in the value of the dollar. The

1 adjustments shall be made by multiplying the base amounts by the
2 percentage change in the California Consumer Price Index as
3 compiled by the Department of Industrial Relations, with the result
4 rounded to the nearest thousand dollars. The Judicial Council shall
5 compute and publish the amounts.

6 SEC. 28. Section 2401 of the Family Code is amended to read:

7 2401. (a) A proceeding for summary dissolution of the
8 marriage shall be commenced by filing a joint petition in the form
9 prescribed by the Judicial Council.

10 (b) The petition shall be signed under oath by both ~~the husband~~
11 ~~and the wife~~, *spouses*, and shall include all of the following:

12 (1) A statement that as of the date of the filing of the joint
13 petition all of the conditions set forth in Section 2400 have been
14 met.

15 (2) The mailing address of ~~both the husband and the wife~~ *each*
16 *spouse*.

17 (3) A statement whether ~~or not the wife~~ *a spouse* elects to have
18 ~~her maiden or his or her~~ former name restored, and, if so, the name
19 to be restored.

20 SEC. 29. Section 3120 of the Family Code is amended to read:

21 3120. Without filing a petition for dissolution of marriage or
22 legal separation of the parties, ~~the husband or wife~~ *a spouse* may
23 bring an action for the exclusive custody of the children of the
24 marriage. The court may, during the pendency of the action, or at
25 the final hearing thereof, or afterwards, make such order regarding
26 the support, care, custody, education, and control of the children
27 of the marriage as may be just and in accordance with the natural
28 rights of the parents and the best interest of the children. The order
29 may be modified or terminated at any time thereafter as the natural
30 rights of the parties and the best interest of the children may
31 require.

32 SEC. 30. Section 3450 of the Family Code is amended to read:

33 3450. (a) Unless the court issues a temporary emergency order
34 pursuant to Section 3424, upon a finding that a petitioner is entitled
35 to immediate physical custody of the child, the court shall order
36 that the petitioner may take immediate physical custody of the
37 child unless the respondent establishes either of the following:

38 (1) That the child custody determination has not been registered
39 and confirmed under Section 3445 and one of the following is true:

1 (A) The issuing court did not have jurisdiction under Chapter
2 2 (commencing with Section 3421).

3 (B) The child custody determination for which enforcement is
4 sought has been vacated, stayed, or modified by a court of a state
5 having jurisdiction to do so under Chapter 2 (commencing with
6 Section 3421).

7 (C) The respondent was entitled to notice, but notice was not
8 given in accordance with the standards of Section 3408, in the
9 proceedings before the court that issued the order for which
10 enforcement is sought.

11 (2) That the child custody determination for which enforcement
12 is sought was registered and confirmed under Section 3445 but
13 has been vacated, stayed, or modified by a court of a state having
14 jurisdiction to do so under Chapter 2 (commencing with Section
15 3421).

16 (b) The court shall award the fees, costs, and expenses
17 authorized under Section 3452 and may grant additional relief,
18 including a request for the assistance of law enforcement officials,
19 and set a further hearing to determine whether additional relief is
20 appropriate.

21 (c) If a party called to testify refuses to answer on the ground
22 that the testimony may be self-incriminating, the court may draw
23 an adverse inference from the refusal.

24 (d) A privilege against disclosure of communications between
25 spouses and a defense of immunity based on the relationship of
26 ~~husband and wife~~ *spouses* or parent and child may not be invoked
27 in a proceeding under this chapter.

28 SEC. 31. Section 3551 of the Family Code is amended to read:

29 3551. Laws attaching a privilege against the disclosure of
30 communications between ~~husband and wife~~ *spouses* are
31 inapplicable under this division. ~~Husband and wife~~ *Spouses* are
32 competent witnesses to testify to any relevant matter, including
33 marriage and parentage.

34 SEC. 32. Section 3580 of the Family Code is amended to read:

35 3580. Subject to this chapter and to Section 3651, ~~a husband~~
36 ~~and wife~~ *spouses* may agree, in writing, to an immediate separation,
37 and may provide in the agreement for the support of either of them
38 and of their children during the separation or upon the dissolution
39 of their marriage. The mutual consent of the parties is sufficient
40 consideration for the agreement.

1 SEC. 33. Section 3585 of the Family Code is amended to read:

2 3585. The provisions of an agreement between the parents for
3 child support shall be deemed to be separate and severable from
4 all other provisions of the agreement relating to property and
5 support of ~~the wife or husband~~ *either spouse*. An order for child
6 support based on the agreement shall be law-imposed and shall be
7 made under the power of the court to order child support.

8 SEC. 34. Section 3600 of the Family Code is amended to read:

9 3600. During the pendency of any proceeding for dissolution
10 of marriage or for legal separation of the parties or under Division
11 8 (commencing with Section 3000) (custody of children) or in any
12 proceeding where there is at issue the support of a minor child or
13 a child for whom support is authorized under Section 3901 or 3910,
14 the court may order (a) ~~the husband or wife~~ *either spouse* to pay
15 any amount that is necessary for the support of ~~the wife or husband~~
16 *other spouse*, consistent with the requirements of subdivisions (i)
17 and (m) of Section 4320 and Section 4325, or (b) either or both
18 parents to pay any amount necessary for the support of the child,
19 as the case may be.

20 SEC. 35. Section 4323 of the Family Code is amended to read:

21 4323. (a) (1) Except as otherwise agreed to by the parties in
22 writing, there is a rebuttable presumption, affecting the burden of
23 proof, of decreased need for spousal support if the supported party
24 is cohabiting with ~~a another person of the opposite sex~~. Upon a
25 determination that circumstances have changed, the court may
26 modify or terminate the spousal support as provided for in Chapter
27 6 (commencing with Section 3650) of Part 1.

28 (2) Holding oneself out to be ~~the husband or wife~~ *spouse* of the
29 person with whom one is cohabiting is not necessary to constitute
30 cohabitation as the term is used in this subdivision.

31 (b) The income of a supporting spouse's subsequent spouse or
32 nonmarital partner shall not be considered when determining or
33 modifying spousal support.

34 (c) Nothing in this section precludes later modification or
35 termination of spousal support on proof of change of circumstances.

36 SEC. 36. Section 4930 of the Family Code, as added by Section
37 2 of Chapter 194 of the Statutes of 1997, is amended to read:

38 4930. (a) The physical presence of the petitioner in a
39 responding tribunal of this state is not required for the

1 establishment, enforcement, or modification of a support order or
2 the rendition of a judgment determining parentage.

3 (b) A verified petition, affidavit, document substantially
4 complying with federally mandated forms, and a document
5 incorporated by reference in any of them, not excluded under the
6 hearsay rule if given in person, is admissible in evidence if given
7 under oath by a party or witness residing in another state.

8 (c) A copy of the record of child support payments certified as
9 a true copy of the original by the custodian of the record may be
10 forwarded to a responding tribunal. The copy is evidence of facts
11 asserted in it, and is admissible to show whether payments were
12 made.

13 (d) Copies of bills for testing for parentage, and for prenatal
14 and postnatal health care of the mother and child, furnished to the
15 adverse party at least 10 days before trial, are admissible in
16 evidence to prove the amount of the charges billed and that the
17 charges were reasonable, necessary, and customary.

18 (e) Documentary evidence transmitted from another state to a
19 tribunal of this state by telephone, telecopier, or other means that
20 do not provide an original writing may not be excluded from
21 evidence on an objection based on the means of transmission.

22 (f) In a proceeding under this chapter, a tribunal of this state
23 may permit a party or witness residing in another state to be
24 deposed or to testify by telephone, audiovisual means, or other
25 electronic means at a designated tribunal or other location in that
26 state. A tribunal of this state shall cooperate with tribunals of other
27 states in designating an appropriate location for the deposition or
28 testimony.

29 (g) If a party called to testify at a civil hearing refuses to answer
30 on the ground that the testimony may be self-incriminating, the
31 trier of fact may draw an adverse inference from the refusal.

32 (h) A privilege against disclosure of communications between
33 spouses does not apply in a proceeding under this chapter.

34 (i) The defense of immunity based on the relationship of husband
35 and wife *spouses* or parent and child does not apply in a proceeding
36 under this chapter.

37 SEC. 37. Section 4930 of the Family Code, as amended by
38 Section 24 of Chapter 349 of the Statutes of 2002, is amended to
39 read:

1 4930. (a) The physical presence of a nonresident party who is
2 an individual in a tribunal of this state is not required for the
3 establishment, enforcement, or modification of a support order or
4 the rendition of a judgment determining parentage.

5 (b) An affidavit, a document substantially complying with
6 federally mandated forms, or a document incorporated by reference
7 in any of them, that would not be excluded under the hearsay rule
8 if given in person, is admissible in evidence if given under penalty
9 of perjury by a party or witness residing in another state.

10 (c) A copy of the record of child support payments certified as
11 a true copy of the original by the custodian of the record may be
12 forwarded to a responding tribunal. The copy is evidence of facts
13 asserted in it, and is admissible to show whether payments were
14 made.

15 (d) Copies of bills for testing for parentage, and for prenatal
16 and postnatal health care of the mother and child, furnished to the
17 adverse party at least 10 days before trial, are admissible in
18 evidence to prove the amount of the charges billed and that the
19 charges were reasonable, necessary, and customary.

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21 tribunal of this state by telephone, telecopier, or other means that
22 do not provide an original record may not be excluded from
23 evidence on an objection based on the means of transmission.

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25 shall permit a party or witness residing in another state to be
26 deposed or to testify by telephone, audiovisual means, or other
27 electronic means at a designated tribunal or other location in that
28 state. A tribunal of this state shall cooperate with tribunals of other
29 states in designating an appropriate location for the deposition or
30 testimony.

31 (g) If a party called to testify at a civil hearing refuses to answer
32 on the ground that the testimony may be self-incriminating, the
33 trier of fact may draw an adverse inference from the refusal.

34 (h) A privilege against disclosure of communications between
35 spouses does not apply in a proceeding under this chapter.

36 (i) The defense of immunity based on the relationship of husband
37 and wife *spouses* or parent and child does not apply in a proceeding
38 under this chapter.

- 1 (j) A voluntary acknowledgment of paternity, certified as a true
2 copy, is ~~admissible~~ *admissible* to establish parentage of the child.

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